

DIRECT TESTIMONY

OF

THOMAS L. GRIFFIN

ACCOUNTING DEPARTMENT

FINANCIAL ANALYSIS DIVISION

ILLINOIS COMMERCE COMMISSION

KMS MACON POWER, INC.

AND

KMS MORRIS POWER, INC.

DOCKET NOS. 03-0606 AND 03-0607 CONSOLIDATED

DECEMBER 23, 2003

**Witness Identification**

**Q. Please state your name and business address.**

A. My name is Thomas L. Griffin. My business address is 160 North LaSalle Street, Chicago, Illinois 60601.

**Q. By whom are you employed and in what capacity?**

A. I am an Accountant in the Accounting Department of the Financial Analysis Division of the Illinois Commerce Commission ("Commission").

**Q. Please describe your qualifications.**

A. For sixteen years prior to my employment with the Commission, I served private industry in various capacities, ranging from Staff Accounting positions to Manager of Accounting and encompassing all areas of accounting and internal auditing. Since joining the Commission's Accounting Department in 1978 I have participated in or supervised the accounting activity in cases involving gas, electric, telephone, water and sewer utilities as well as cases involving companies in the transportation industry.

I have a degree in Business Administration with a concentration in Accounting from Governors State University and a degree in Advanced Accounting from International Accountants.

19 **Q. What is the function of the Commission's Accounting Department?**

20 A. The Department's function is to monitor the financial condition of public utilities as  
21 part of the Commission's responsibilities under Article IV of the Public Utilities Act  
22 ("Act") (220 ILCS 5/1-101, et seq.) and to provide accounting expertise on matters  
23 before the Commission.

24 **Q. Have you previously testified before this Commission?**

25 A. Yes, I have testified in numerous cases before the Commission. I have also  
26 testified as an expert accounting witness before the Circuit Courts in Rock Island,  
27 Illinois and Chicago, Illinois.

28 **Q. What are your responsibilities in this case?**

29 A. I have been assigned to this case by the Manager of the Accounting Department  
30 of the Commission. I am to review the Respondents' filed testimony, analyze the  
31 underlying data and make recommendations where appropriate.

32 **Purpose of Testimony**

33 **Q. What is the purpose of your testimony in this proceeding?**

34 A. The purpose of my testimony is to address the tax credit liabilities owed by four  
35 KMS Qualified Solid Waste Energy Facilities (QSWEFs). For the purpose of my  
36 testimony I will refer to the four facilities as KMS Macon Power, Inc. (KMS

37 Macon), KMS Morris Power, Inc, (KMS Morris), KMS Joliet 1 (Currently owned by  
38 Algonquin Power Income Fund) and KMS Joliet 2. One may refer to Staff witness  
39 David A. Borden's Direct Testimony for details regarding the identity of KMS Joliet  
40 1 and KMS Joliet 2.

41 **Calculation of the Tax-Credit Liability**

42 **Q. Please describe how the tax credit liability for a QSWEF is calculated.**

43 A. The local utility that purchases electricity from the QSWEF is obligated by 83 Ill.  
44 Adm. Code 445.60 to pay the "Retail Rate" for electricity purchased from the  
45 QSWEF. The "Retail Rate" is the average price of electricity paid for by a unit or  
46 units of local government to the electric utility during the latest twelve-month  
47 period. The utility may take a tax-credit pursuant to 83 Ill. Adm. Code 445.70 that  
48 is equal to its "Retail Rate" less its "Avoided Cost". The utility's "Avoided Cost" is  
49 the amount that the utility would be required to pay a Qualified Solid Waste  
50 Energy Facility pursuant to 83 Ill. Adm. Code 430.80.

51 **Q. Who is the local electric utility for each of the four QSWEFs?**

52 A. KMS Morris, KMS Joliet 1 and KMS Joliet 2 sell electricity to Commonwealth  
53 Edison Company (ComEd). KMS Macon sells electricity to Illinois Power  
54 Company (Illinois Power).

**Q. What was the amount of tax credits that were taken by the local utilities for each of the four facilities through January 31, 2003, which was prior to the time that Respondents witness Jay A. Steinberg was appointed Receiver for the QSWEFs by the Bankruptcy Court?**

**A.** The accumulated tax credits taken from the time the QSWEFs began operation until January 31, 2003 is as follows:

KMS Macon	\$2,476,572.91
KMS Morris	1,214,726.82
KMS Joliet 2	1,485,862.03
KMS Joliet1	<u>3,003,201.80</u>
	\$8,180,363.56

**Q. What are the amounts of tax credits taken by the local utility companies after January 31, 2003?**

**A.** ICC Staff Exhibits 2.1 through 2.4 show the total amount of tax credits taken for each of the facilities since February 2003 on Column H, Line 15. The accumulated total is \$1,209,471.80 as of November 30, 2003, which is the latest information currently available.

**Repayment of the Tax-Credit Liability**

**Q What is the procedure for paying back the tax credits taken by the local electric utilities?**

**A.** The tax credits are taken by the local utilities to avoid their taking a loss from purchases they are required to make from QSWEFs. However, the State of Illinois does expect the QSWEFs to repay the tax credits in time. Sec. 8-403.1(d) of the Act states in part:

*Whenever a qualified solid waste energy facility has paid or otherwise satisfied in full the capital costs or indebtedness incurred in developing and implementing the qualified facility, the qualified facility shall reimburse the Public Utilities Fund in the State treasury for the actual reduction in payments to that Fund caused by this subsection (d) in a manner to be determined by the Illinois Commerce Commission and based on the manner in which revenues for that Fund were reduced.*

In addition, 83 Ill. Adm. Code 445.70(b)(2) states in part:

*For electric generation facility fueled by methane gas generated from landfills, the starting date of reimbursement shall not exceed ten years from the date the facility begins commercial operation, after all operational and acceptance testing has been completed.*

**Q. Has the Commission ordered any QSWEFs to repay the State for tax credits taken by their local electric utility?**

100 A. Yes, the Commission has ordered facilities owned by Bio-Energy Partners to  
101 repay tax credits to the State. (Docket Nos. 89-0236, 90-0414, 92-0058).

102 **Q. In what manner did the Commission order those tax credits to be repaid?**

103 A. After the utility companies stopped paying the retail rate and stopped taking tax  
104 credits, the Commission ordered Bio-Energy Partners to repay the tax credits  
105 monthly in the same amounts that they were taken.

106 **Q. How do you recommend that the Commission order the Respondents to**  
107 **repay the State of Illinois for tax credits taken by the four QSWEF facilities**  
108 **since February 2003?**

109 A. I agree with Staff witness Borden's recommendation that the Respondents make  
110 a single lump-sum payment to avoid the administrative costs associated with the  
111 monthly payment method and to ensure rapid repayment. This approach would  
112 not be inconsistent with the Bio-Energy orders because the payment would be for  
113 the present value of 14 monthly installments and therefore equal in value. There  
114 is no reason, from my perspective, to have the Respondents put the money in an  
115 escrow account and then parcel it out to the State over 14 months. Instead of  
116 paying monthly installments, the Respondents should pay one lump-sum payment  
117 for each of the facilities within 30 days after the Commission enters the orders in  
118 these cases.

119 **Q. What are the lump-sum amounts that Respondent should pay?**

A. These amounts, through November 2003 can be found in Column I, Line 15 of ICC Staff Exhibits 2.1 through 2.4. Of course, these amounts would have to be updated for tax credits taken from December 2003 through March 2004.

**Q. What discount rate did you use to compute the present value amounts?**

A. I used 1.26%, which was the rate for one year Treasury Bills at December 17, 2003.

**Q. What would be the repayment schedule if Respondent were to repay the tax credits in monthly installments? When should the repayments begin?**

A. If the Commission orders Respondents to repay the State of Illinois for tax credits taken in monthly installments, payments should begin in April 2004 after the Commission enters a final order in these Dockets. Payments should be in the amounts that the tax credits were taken beginning February 2003. In the case of KMS Joliet 1, this schedule would be contingent upon the Respondents acquiring the facility from Algonquin Power Income Fund. The schedule of payments through November can be found in Column H of ICC Staff Exhibits 2.1 though 2.4. As is true in the case of the lump-sum scenario, these amounts would have to be updated for tax credits taken from December 2003 through March 2004.

## **CONCLUSIONS**

**Q. Please summarize your conclusions.**



139 A. I recommend that the Respondents make one lump-sum payment for each facility  
140 for the present value of the entire liability, which is shown on ICC Staff Exhibits  
141 2.01 through 2.04, Column I, Line 15 (which will be updated to include tax credits  
142 taken though March 2004). These payments should be made within 30 days  
143 after the Commission enters an order in these Dockets.

144 **Q Does this conclude your testimony?**

145 A. Yes.

KMS Macon Power, Inc.

A	B	C	D	E	F	G	H	I	J
Line	quoted rate	1 + eff. annual yield	Monthly Yield	Month	PV Factor	Amount Due	Present Value		
1	1.26%	1.0063	1.012640	1.001047	1	0.998954	24,876.88	24,850.85	
2				1.002096	2	0.997909	42,886.85	42,797.16	
3				1.003145	3	0.996865	38,780.27	38,658.69	
4				1.004196	4	0.995822	47,400.67	47,202.63	
5				1.005247	5	0.994780	81,054.80	80,631.71	
6				1.006300	6	0.993739	71,277.99	70,831.75	
7				1.007354	7	0.992700	65,676.92	65,197.47	
8				1.008409	8	0.991661	63,168.20	62,641.46	
9				1.009465	9	0.990624	55,620.47	55,098.97	
10				1.010522	10	0.989588	81,747.58	80,896.39	
11				1.011580	11	0.988552	-	-	
12				1.012640	12	0.987518	-	-	
13				1.013700	13	0.986485	-	-	
14				1.014762	14	0.985453	-	-	
15				Total			572,490.63	568,807.07	Total PV

KMS Morris Power, Inc.

A	B	C	D	E	F	G	H	I	J
Line	quoted rate	1 + eff. annual yield	Monthly Yield	Month	PV Factor	Amount Due	Present Value		
1	1.26%	1.0063	1.012640	1.001047	1	0.998954	20,019.75	19,998.81	
2				1.002096	2	0.997909	22,084.47	22,038.29	
3				1.003145	3	0.996865	21,681.30	21,613.32	
4				1.004196	4	0.995822	-	-	
5				1.005247	5	0.994780	41,727.95	41,510.14	
6				1.006300	6	0.993739	14,366.05	14,276.11	
7				1.007354	7	0.992700	8,675.10	8,611.77	
8				1.008409	8	0.991661	8,150.72	8,082.75	
9				1.009465	9	0.990624	2,837.92	2,811.31	
10				1.010522	10	0.989588	3,187.82	3,154.63	
11				1.011580	11	0.988552	-	-	
12				1.012640	12	0.987518	-	-	
13				1.013700	13	0.986485	-	-	
14				1.014762	14	0.985453	-	-	
15				Total			142,731.08	142,097.13	Total PV

KMS Joliet 2

A	B	C	D	E	F	G	H	I	J
Line	quoted rate	1 + eff. annual yield	Monthly Yield	Month	PV Factor	Amount Due	Present Value		
1	1.26%	1.0063	1.012640	1.001047	1	0.998954	27,568.30	27,539.46	
2				1.002096	2	0.997909	25,713.39	25,659.62	
3				1.003145	3	0.996865	16,030.64	15,980.38	
4				1.004196	4	0.995822	-	-	
5				1.005247	5	0.994780	30,068.98	29,912.02	
6				1.006300	6	0.993739	16,361.59	16,259.16	
7				1.007354	7	0.992700	13,267.96	13,171.10	
8				1.008409	8	0.991661	15,032.28	14,906.93	
9				1.009465	9	0.990624	7,833.68	7,760.23	
10				1.010522	10	0.989588	17,828.54	17,642.90	
11				1.011580	11	0.988552	-	-	
12				1.012640	12	0.987518	-	-	
13				1.013700	13	0.986485	-	-	
14				1.014762	14	0.985453	-	-	
15				Total			169,705.36	168,831.80	Total PV

## KMS Joliet 1

A	B	C	D	E	F	G	H	I
Line	quoted rate	1 + eff. annual yield	Monthly Yield	Month	PV Factor	Amount Due	Present Value	
1	1.26%	1.0063	1.012640	1.001047	1	0.998954	34,809.22	34,772.80
2				1.002096	2	0.997909	27,317.72	27,260.59
3				1.003145	3	0.996865	39,743.63	39,619.03
4				1.004196	4	0.995822	-	-
5				1.005247	5	0.994780	72,984.25	72,603.28
6				1.006300	6	0.993739	23,643.09	23,495.07
7				1.007354	7	0.992700	26,099.67	25,909.14
8				1.008409	8	0.991661	35,245.93	34,952.03
9				1.009465	9	0.990624	26,974.93	26,722.01
10				1.010522	10	0.989588	37,726.29	37,333.47
11				1.011580	11	0.988552	-	-
12				1.012640	12	0.987518	-	-
13				1.013700	13	0.986485	-	-
14				1.014762	14	0.985453	-	-
15			Total				324,544.73	322,667.41 Total PV